



New South Wales

Personal Injury Commission Amendment Bill 2022

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make the following amendments to the *Personal Injury Commission Act 2020* and motor accidents legislation in relation to the Motor Accidents Division of the Personal Injury Commission (the **Commission**)—

- (a) to allow the Commission to issue a summons to a person who is not a party to proceedings before the Commission,
- (b) to allow the Commission to require a person appearing in proceedings before the Commission to give evidence on oath or affirmation,
- (c) to require the Commission to attempt conciliation in relation to a claim for damages before assessing the claim,
- (d) to establish a new procedure for mediation of certain matters referred to the Commission for review or assessment and to provide for the appointment of mediators and the regulation of costs for legal services in relation to mediation,
- (e) to provide for the appointment of an acting Division Head.

The Bill also makes an amendment to the *Motor Accidents and Workers Compensation Legislation Amendment Act 2022* to clarify the scope of an uncommenced provision permitting the making of regulations about additional compensation payable to dependants of deceased workers where a lump sum death benefit is paid to the NSW Trustee.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Personal Injury Commission Act 2020 No 18

Schedule 1[1] enables the President of the Commission to give procedural directions relating to the practice and procedures of mediators. The amendment is consequent on the amendment made by **Schedule 2.1[3]**.

Schedule 1[2] allows the President of the Commission to appoint mediators consequent on the amendment made by **Schedule 2.1[3]**.

Schedule 1[4] makes the amendment mentioned in paragraph (a) of the Overview. **Schedule 1[3]** makes a consequential amendment.

Schedule 1[5] makes the amendment mentioned in paragraph (b) of the Overview. **Schedule 1[7]** makes a consequential amendment.

Schedule 1[6] allows the Minister to appoint the President, a Deputy President or a principal member of the Commission to be an Acting Division Head during the absence of a Division Head or a vacancy in the office of a Division Head.

Schedule 1[8] requires the Commission to attempt conciliation before making an assessment of a claim for damages under the *Motor Accident Injuries Act 2017* or a claim under the *Motor Accidents Compensation Act 1999*. The Commission must use its best endeavours to bring the parties to a settlement.

Schedule 2 Amendment of motor accidents legislation

Schedule 2.1[3] inserts proposed Division 7.3 into the *Motor Accident Injuries Act 2017*, which establishes a new procedure for mediation of matters referred for review or assessment under the Act, Divisions 7.4–7.6. The President of the Commission may refer a matter for mediation by a mediator before allocating the matter to a medical assessor, a merit reviewer, a review-panel or the Commission. The mediator is to issue a certificate stating the mediation was attempted and whether or not the parties reached agreement. The proposed Division also provides for the procedure for allocating a matter for review or assessment after an unsuccessful mediation, the powers of mediators and the making of regulations about the fees paid in connection with mediation. **Schedule 2[1] and [2]** make consequential amendments.

Schedule 2.1[4] allows regulations under the *Motor Accident Injuries Act 2017* to make provision about the fees payable for conciliation in relation to the assessment of a claim for damages. The amendment is consequent on the amendment made by **Schedule 1[8]**.

Schedule 2.1[5] authorises the expenditure incurred by the Commission in providing mediation services under proposed Division 7.3 to be paid from the Motor Accidents Operational Fund.

Schedule 2.1[6] contains provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2.2 amends the *Motor Accident Injuries Regulation 2017* by prescribing the maximum costs for legal services provided to a claimant or an insurer in connection with a mediation under proposed Division 7.3 of the *Motor Accident Injuries Act 2017*.

Schedule 2.3 makes an amendment to the *Motor Accidents Compensation Act 1999* to enable regulations under the Act to make provision about the fees payable for conciliation in relation to the assessment of a claim. The amendment is consequent on the amendment made by **Schedule 1[8]**.

Schedule 3 Amendment of Motor Accidents and Workers Compensation Legislation Amendment Act 2022 No 25

Schedule 3[2] clarifies the scope of an uncommenced provision of the *Motor Accidents and Workers Compensation Legislation Amendment Act 2022* permitting the making of regulations under the *Workers Compensation Act 1987* prescribing the kinds of fees payable as additional compensation to dependants of deceased workers where a lump sum death benefit is paid to the NSW Trustee. The amendment ensures the provision permits the making of regulations prescribing a method for determining the amount of additional compensation payable, in addition to the kinds of fees for which compensation is payable. **Schedule 3[1] and [3]** make consequential amendments.